*** THE HONOURABLE SRI JUSTICE GODA RAGHURAM**

+ WRIT PETITION NO. 22310 of 2006

% THURSDAY, 16TH DAY OF NOVEMBER, TWO THOUSAND SIX

Mulugu Umma Reddy son of late M.Mall Reddy and others

… Petitioner

versus

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State of A.P.Industries &Commerce(I&F) Dept.,rep. by its principal Secretary to government and Commissioner for Industrial Promotion, Hyderabd and others

…Respondents

! Counsel for the petitioners : Ms. Vilas V.Afzul Purkar

^ Counsel for the respondents : Government Pleader for Revenue and Land Acquisition for respondent Nos.1 to 4, Sri K.Ramakrishna Reddy learned Senior Counsel for respondent No.6, Sri B.Adinarayana Rao Advocate for respondent No.7; Sri S.Ravi, Advocate for respondent Nos.50 and 51 and Sri S.R.Ashok Senior Advocate for Sri S.Chakrapani Advocate for respondent Nos.34 to 39,41 to 48,49 and 52.

< Gist :

>Head Note:

? Cases referred

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETTION NO.22310 OF 2003

BETWEEN:

Mulugu Umma Reddy son of late M.Mall Reddy and others

…Petitioners

vs.

State of A.P.Industries &Commerce(I&F) Dept.,rep. by its principal Secretary to government and Commissioner for Industrial Promotion, Hyderabd and others

..Respondents

THE HONOURABLE SRI JUSTICE GODA RAGHURAM

WRIT PETTION NO.22310 OF 2003

ORAL ORDER

Heard Sri Vilas V.Afzul Purkar the learned counsel for the petitioners, the learned Government Pleader for Revenue and Land Acquisition for respondent Nos.1 to 4, Sri K.Ramakrishna Reddy learned Senior Counsel for respondent No.6, Sri B.Adinarayana Rao Advocate for respondent No.7; Sri S.Ravi, Advocate for respondent Nos.50 and 51 and Sri S.R.Ashok Senior Advocate for Sri S.Chakrapani Advocate for respondent Nos.34 to 39,41 to 48,49 and 52.

There are three petitioners. Petitioner No.1 claims to be the legal representative of one Late Molugu Malla Reddy. Petitioners 2 and 3 claim to be legal representatives of late M.Narasimha Reddy. The three petitioners claim 1/3rd share each in what is claimed to be the 1/4th share of late M.Malla Reddy in the properties which are the subject matter of the order in G.O.Ms.No.375, Industries & Commerce (I&F) Department, dated.07-09-2002.

The writ petition is filed for the relief: "*declaring that the G.O.Ms.No.375 dated.07-09-2002 enures to the benefit of the petitioners and respondents 6 to 36 and all of them are together entitled to reconveyance and all benefits there under relating to Sy.Nos.220 admeasuring Ac.11.03guntas and S.No.221 admeasuring Ac.8.31 guntas of Kapra village, Keesara Mandal, Ranga Reddy District*" and for a direction that "*the respondents 1 to 5 to make*

appropriate entries in the Revenue Records accordingly".

The case of the petitioners:

The petitioners assert to be the joint owners of an extent of Ac.11.03 guntas in Sy.No.220 and Ac.8.31 guntas in Sy.No.221, in all admeasuring Ac.19.34 guntas in Kapra village, Keesara Mandal, Ranga Reddy District.

In November-1996 the State acquired a total extent of Ac.587.20 guntas in several survey numbers in and around Kapra village for establishment of the Nuclear Fuel Complex,(N.F.C) Hyderabad. Acres.163.17 guntas of land jointly owned by the petitioners and respondent Nos.6 to 48 was part of the land of a total extent of Ac.587.20 guntas initially proposed for acquisition for establishing the Nuclear Fuel Complex. Eventually, only an extent of Ac.479.09 guntas including the extent of Ac.74.04 guntas belonging to the petitioners and the respondent Nos.6 to 48 was acquired.

An extent of Ac.74.04 guntas which was also acquired for the purpose of the N.F.C. by the State jointly belonged to the heirs of one Molugu Ram Reddy. His legal heirs (grand sons i.e, M.Venkata Reddy; Ranga Reddy; Papi Reddy and Yella Reddy, Narasimha Reddy and Malla Reddy) were entitled to 1/4th share each in the Ac.74.04 guntas acquired for the N.F.C.

In G.O.Ms.No.375, the State, exercising powers under Sec.48(1) of the Land Acquisition Act,1894(for short "the Acquisition Act") withdrew the earlier acquisition notifications (of 1996) to the extent of Ac.11.03 in Sy.No.221 and Ac.8.31 in Sy.No.221 of Kapra village. The reasons recorded by the State (in G.O.Ms.No.375) for exercising the power (to withdraw from the acquisition) to the extent relevant and material for the purposes of this writ petition, are set out briefly:

(a) The N.F.C informed the State that they are in possession of only an extent of Ac.1.17 in Sy.No.221 and

have no objection if the State decides to handover the balance land in an extent of Ac.11.30 in Sy.No.221 and Ac.8.31 guntas in Sy.No.220 to the rightful owners excluding Ac.1.17 guntas in Sy.No.221 which is in their possession.

(b) The 3rd respondent-District Collector, Ranga Reddy informed that the 4th respondent had issued a memo to the "original pattadar" to deposit an amount of Rs.1,46,280/- towards compensation of the lands; the pattadar M.Ram Reddy son of Late M.Papi Reddy deposited the said amount on 03-09-1996;

(c) The Chief Commissioner of Land Administration by his letter dated.23-08-2002 informed the State Government that in view of the stand of the N.F.C (referred to above) the Government may consider withdrawing from the acquisition, exercising powers under Sec.48(1) of the Acquisition Act;

(d) The land is in continuous possession of the original pattadar, M.Ram Reddy in view of a settlement and as the compensation amount of Rs.1,46,280/- has been repaid, the Chief Commissioner of Land Acquisition requests issuance of appropriate orders by the State;

The core decision of the State is set out in G.O.Ms.No.375 in para-5:

"5. Government after careful examination of the proposal, hereby approve the withdrawal notification under Section.48(1) of the Land Acquisition Act,1894,(Act No.1 of 1894) for the lands to an extent of Ac.11.03 guntas in Sy.No.220 and an extent of Ac.8.31 guntas in Sy.No.221(Total Ac.19.34 guntas) in Kapra Village, Keesara Mandal, Ranga Reddy District from acquisition"

The preamble to the exercise of the State power under Sec.48(1) of the Acquisition Act in G.O.Ms.No.375 has given rise to several writ petitions in this court by several members claiming to be entitled to a share of the asserted joint property of the four branches mentioned supra namely, M.Venkata Reddy; Ranga Reddy; Papi Reddy; and Yella Reddy, Narasimha Reddy and Malla Reddy.

The petitioners are legal heirs of one branch (of Yella Reddy, Narasimha Reddy, and Malla Reddy) and claim 1/4th share in the extent of Ac.19.34 guntas released by the Government from the acquisition process, in G.O.Ms.No.375.

Other writs engendered by G.O.Ms.No.375:

One M.Bhaskar Reddy claiming to belong to the lineage of Papi Reddy filed W.P.No.24641 of 2005 seeking conveyance(by the State) of the lands released from acquisition in G.O.Ms.No.375, to all persons (including himself) entitled to a share in the joint family property. Bhaskar Reddy first represented to the State. His applications having been rejected, he filed W.P.No.24641 of 2005. A learned single judge of this Court, by the judgment dated.21-11-2005 dismissed the writ petition on an assumption that Bhaskar Reddy was seeking reconveyance of the land from the Government, which had vested in the State pursuant to the acquisition. The writ petition was dismissed on 21-11-2005. Bhaskar Reddy unsuccessfully appealed. Writ Appeal No.2335 of 2005 was dismissed on 29-11-2005. A Special Leave Petition of Bhaskar Reddy was also dismissed *in limini* on 27-01-2006. Thus ended the litigative campaign of Bhaskar Reddy.

Another scion of the M.Malla Reddy clan, Basanth Reddy filed W.P.No.18864 of 2006 reiterating Bhaskar Reddy's claims and seeking a similar relief. A learned single judge of this Court by the judgment dated.13-09-2006 dismissed W.P.No.18864 of 2006. Undeterred, Basanth Reddy unsuccessfully filed Writ Appeal No.954

of 2006. This was dismissed on 18-09-2006.

To enliven the litigative saga, one Kanakaiah filed a *pro bono* public petition (W.P.No.17191 of 2006) assailing the proposal of the State Government to exercise the power under Sec.48(1) of the Acquisition Act. A Division Bench of this Court by the judgment dated.23-08-2004 dismissed this writ petition with costs.

One G.Narsaiah claiming to be alienee of the land filed W.P.No.21678 of 2006 impeaching G.O.Ms.No.375. This writ petition was also dismissed on 18-10-2006 on the ground that Bhaskar Reddy's litigative campaign had failed up to the Supreme Court. G.Narsaiah filed W.A.No.1094 of 2006. This was also dismissed on 26-10-2006.

M.Amarender Reddy and Smt.Penuballi Lakshmi(son and wife of M.Ram Reddy) filed W.P.No.22265 of 2006 for a declaration that the action of the State in releasing Ac.19.34 guntas in Sy.No.220 and 221 in favour of the legal representatives of Ram Reddy and to the exclusion of the other coparceners is illegal and arbitrary and for a direction to the State and the authorities to release the land in favour of all the coparcerns and to declare G.O.Ms.No.375 to the extent of its de-notifying purposes as violative of Sec.48 of the Acquisition Act. This writ petition was dismissed as withdrawn.

Some of the petitioners in the aforesaid series of *lis* are also respondents in this writ petition. Respondent Nos.6 to 9 are legal heirs of M.Papi Reddy's branch.

Why this writ:

The petitioners' seek relief on the assumption and premise that G.O.Ms.No.375 is not only an exercise of power under Sec.48(1) of the Acquisition Act but also conveys or redelivers the property in favour of M.Ram Reddy, son of M.Papi Reddy and his heirs.

Sri Vilas V. Afzul Purkar, the learned counsel for the petitioners endeavoured to establish (through various documents, some

constituting assertions by or on behalf of the petitioners; others claimed to be admissions by and on behalf of the respondent Nos.6 to 9) that the extents of Ac.19.34 guntas in Sy.No.220 and 221 of Kapra village (in respect of which acquisition was withdrawn in G.O.Ms.No.375) jointly belongs to four sharers of the original M.Ram Reddy lineage and that as legal heirs they are entitled to their respective shares in accordance with applicable laws of succession or flow of joint family property, under the appropriate legal architecture.

The preambular statements (paras 2 to 4) in G.O.Ms.No.375 and other documents (placed for the perusal of this Court on behalf of the petitioners) i.e.,(i) a letter dated.30-07-1996 addressed by one M.Ram Reddy (the predecessor in interest of respondent Nos.6 to 9) to the 4th respondent; (ii) the letter addressed by the 4th respondent to the N.F.C dated.13-08-1996; (iii) the response of the N.F.C to the 4th respondent dated.14-08-1996;(iv) the representation addressed by the predecessor in interest of the petitioner dated.01-02-2001 to the Joint Collector, Ranga Reddy; (v) the memo dated.02-09-1996 addressed by the 4th respondent to Ram Reddy, the predecessor in interest of respondent Nos.6 to 9; (vi) the 4th respondent's proposal addressed to the 3rd respondent, dated.07-09-1996; (vii) the directive addressed by the 4th respondent to the M.R.O, Keesara Mandal, Ranga Reddy District; and (viii) the 4th respondent's letter to the 3rd respondent dated.09-05-2002; (the last of the documents having culminated in issuance of G.O.Ms.No.375), that despite the acquisition in 1966, the possession of land in an extent of Ac.19.34 guntas was not with the State. The acquisition was however completed in all respects and the title vested in the State. The award was passed and the compensation amount was received by the claimants even in respect of this land. Possession however continued (a disputed fact) with M.Ram Reddy

whose legal heirs, respondent Nos.6 to 9 claim to be.

It appears that the Government's efforts to recover possession of the land from Ram Reddy and his legal heirs did not succeed as the legal heirs of Ram Reddy instituted an injunctive suit and obtained an ad-interim injunction frustrating the State's endeavor to recover possession of Ac.19.34 guntas.

Cornered in the litigative vortex, deprived of possession despite having parted with the compensation amount, pursuant to the award passed, the Government apparently decided to wriggle out of this piquant situation. Getting wind of the State's dilemma, some heirs of the Ram Reddy branch negotiated with the State (from a position of strength, having obtained an interim injunction). From the documents on record, it does not appear that the State had ever negotiated from all the owners or possessors. The State does not also appear to have made any attempt to ascertain who were the persons lawfully entitled to this land.

Since the Ram Reddy branch were negotiating and had produced some documents in support of their assertion that they were in continuous and uninterrupted possession of the land, the State and its agencies were rest content with negotiating with the Ram Reddy branch (respondent Nos.6 to 9). The entire processing of the Governmental decision (to the extent record is placed for perusal of this Court) discloses exclusive negotiation between the legal representatives of Ram Reddy and the State and its Officers.

The preambular statements in paras 1 to 4 of G.O.Ms.No.375 are the product of such exclusive negotiation with the Ramf Reddy clan. Para.5 of G.O.Ms.No.375 sets out the formal expression of statutory power under Sec.48(1) of the Acquisition Act (to withdrew from the acquisition of 1996).

As is apparent from the debate at the Bar, it appears that the value of these lands has exponentially grown. Consequently the apathy of

the other coparceners during the 1970's to 1990's, transformed into active interest. They also wanted a piece of this valuable action.

Just before the issuance of G.O.Ms.No.375 and shortly thereafter two representations were made by the petitioners and other claimants to the State and State authorities for reconveyance of the lands in the proportion in which they were acquired from the several owners (of the extent of Ac.19.34 guntas in Sy.Nos.220 and 221 of Kapra village). As is perhaps common place in executive decision making process, since negotiations began with the Ram Reddy branch, the process continued to be Rami Reddy centric. This is the only discernable foundation and justification for paras 3 & 4 statements in G.O.Ms.No.375.

Since the matter was processed at several levels(between respondent Nos.1 to 4) culminating in G.O.Ms.No.375 and as paras 3 & 4 of the G.O. describe Sri Ram Reddy and his legal heirs at various points of time as "original pattadars", "pattadars", "possessor" etc., the other members of the several branches of the patriarch M.Ram Reddy, became panicky and assumed that G.O.Ms.No.375 conveys the land or redelivers it in favour of the legal representatives of M.Ram Reddy. It is this premise apprehension or assumption that has led to the succession of writ petitions by Bhaskar Reddy, Basanth Reddy and others and the petitioners too.

Shorn of its verbiage, the specific relief sought by the petitioners is that this Court should set at naught the restricted reconveyance of the land in an extent of Ac.19.34 guntas (restrictively conveyed to M.Rami Reddy and his heirs) and must declare and ensure to all the persons entitled, a share in this property (in Sy.Nos.220 and 221 of Kapra village).

The only issue that falls determination by this Court is whether the State while exercising power under Sec.48 of the Acquisition Act has

power, authority or jurisdiction to reconvey/redeliver property (of the extent of Ac.19.34 guntas in Sy.Nos.220 and 221 of Kapra village) to Sri M.Ram Reddy or his legal heirs exclusively or even to determine the destination of the lands withdrawn from the acquisition proceedings.

In the considered view of this Court, this Court has no jurisdiction to declare the competing claims to title, under the garb of interpreting the order in G.O.Ms.No.375. It is not practical within the spectrum of the normal procedure under Article.226 of the Constitution nor is it pragmatic given the existing litigative burden of cases pending under Article 226 before this Court, to determine disputed claims to title. All such claims are more appropriately addressed before the Civil Court of competent jurisdiction or any other forum having the right to adjudicate upon and to determine disputed questions of title. There appears no warrant for invoking or exercising the extraordinary jurisdiction of this Court which is normatively meant to address grievances in the public law area.

Whether G.O.Ms.No.375 in terms or on the authority of the State under Sec.48(1) purports to or has conveyed or redelivered the land to Sri M.Rami Reddy or his legal heirs as apprehended and asserted by the petitioners? In the considered view of this Court the answer to this issue is in the negative.

The acquisition of the land by the State and in favour of the N.F.C in 1966 commenced with a proposal by the State by a notification u/Sec. 4(1) of the Acquisition Act. Processes under the Act, including the declaration u/Sec.6, the award enquiry, the award, the payment or deposit of compensation into the civil court and the receipt of the compensation by the claimants to it, took place. However, for reasons of its own including those recorded in G.O.Ms.No.375, the State wanted to divest itself of this land.

Such divestiture by the State, of the land which is vested in it

pursuant to the completed acquisition proceedings could have been pursued in several ways. The acquired land could have been put to use for any other public purpose; the land could have been sold, leased or otherwise alienated to any other persons including some of the petitioners before it; or as was done in G.O.Ms.No.375 the State could have exercised power u/Sec. 48(1) of the Acquisition Act and withdrawn from the acquisition proceedings.

The power of the State to deal rationally with its property, in exercise of its executive power under the Constitution is not in serious contest. However, the State did not choose to deal with this land *de jure* belonging to it though *de facto* not in its possession as it appears, in exercise of the available executive power under Article. 162 of the Constitution. Instead it chose to withdraw from the acquisition in specific exercise of the power available under Sec.48(1). Once the State invokes the available power u/Sec.48(1) and withdraws from the acquisition, it is *axiomatic* that the State walks out of the acquisition *ab initio* and the possession, entitlement or relationship with the State to the land in question is restored to the position as existed prior to the notification u/Sec.4(1). This legal position is the inexorable result of exercise of the power u/Sec. 48(1). There are provisions in Sec.48(2) which enable the State to deal with and cater to the consequences resulting from the initial notification (under Sec.4) up to the decision to withdraw (under Sec.48) from the acquisition;, i.e., provision for compensating any loss or damage suffered by the owner of the property in consequence of the acquisition proceedings. This aspect is not germane to this *lis*.

This court is narrowly concerned in this case with the legal position consequent on the exercise by the State of the powers u/Sec.48(1).

In the considered view of this court as already stated and to

reiterate, on the exercise of power u/Sec.48(1), the State is denuded of all its rights and entitlements that inhere in it on the acquisition and the land is restored to its virginal state in so far as the State is concerned as though there was no acquisition.

Sec.48(1) of the Acquisition Act confers an independent power on the State. This power is not referable to any other provisions of this Act. Under Sec.48, it is clear that completion of the acquisition as notified is not compulsory and it is left to the discretion of the State to withdraw from the acquisition of any land of which possession has not been taken. The expression "any land" includes a portion of the land acquired. The only condition to the exercise of the power by the State u/Sec.48(1) is that possession has not been taken. Once the power is validly exercised and specifically u/Sec.48(1), by a formal expression of the power, as is apparent from the order in G.O.Ms.No.375, the State withdraws from the acquisition. There is nothing in the provisions of the Acquisition Act either in Sec.48 or elsewhere which confers any power, authority or jurisdiction in the State to determine the destination or the title of the land(of which the State has divested itself), by exercising the power under Sec.48(1).

The administrative construction of facts by the respondents 1 to 4 or the administrative conclusion, of whether one or more persons were the "original pattadars", "pattadars" or "in possession", is just what it is; an administrative statement of facts; and of no legal consequence *per se*. Whether it is a relevant evidence on a fact in issue, whether it is a sufficiently probative evidence to fertilize and legitimize a conclusion one way or the other, are matters more appropriately considered by the appropriate adjudicatory forum, considering the question.

This court is not determining the disputed claims of title to the property (of Ac.19.34 gts, in Sy. No. 220 and 221 of Kapra village) and is not required to pronounce whether the factual assumptions by respondents 1 to 4, recorded during the course of the administrative

processing culminating in issuance of G.O.Ms. No.375, constitute binding conclusions on the existence or otherwise of the title to this extent of land. This court is not called upon nor would determine whether the assumptions by the State and its executive actors, as to the existence of a certain set of facts, or interpretation as to the purport or meaning of certain documents – revenue or otherwise, constitute primarily or secondary evidence or even evidence at all. These are also areas more appropriately addressed to the appropriate adjudicatory forum, for determination. Suffice it to record that G.O.Ms.No. 375 is but a simplicitor exercise of Governmental power u/Sec. 48(1) of the Acquisition Act and only constitutes withdrawal by the State from the acquisition put into motion in 1966 (for acquisition of land for NFC).

Sri K.Ramakrishna Reddy, the learned Senior Counsel representing the 6th respondent (one of the claimed heirs of Ram Reddy) contends that the judgment of this court in WP No.2641/05, WA No.2335/05, SLP Civil No.1470/06 (at the instance of M.Bhaskar Reddy); WP No.18864/06, WA No.954/06 (at the instance of M.Basanth Reddy); WP No.21678/06 and WA No.1094/06 (at the instance of G.Narasaiah) and WP No. 2265/06 (by M. Amarender Reddy and P. Lakshmi) and the conclusions therein bind and circumscribe the rights of the petitioners in this writ petition and any other claims to the property. It is also contended though faintly, that some of these writ petitions were presumably in a representative capacity, representing the interest of the petitioners and other claimants as well, therefore the petitioners and the other claimants are constructively bound by the conclusions in those decisions. The contention in brief is that the principles of *res judicata* and constructive *res judicata* apply and disentitle the reliefs sought herein, even on merits.

As this court is not pronouncing upon the petitioners' claim to title to the property in question, this court is disinclined to go into the question whether the claim of the petitioners on merits to the title to the property, is barred on application of the principles of *res judicata* and constructive *res judicata.*

That not only the principle of *res judicata* but also the principle of constructive *res judicata* apply to writ petitions, is a principle too well settled to justify an idle parade of familiar knowledge. The State while exercising power under Sec. 48(1) does not determine the title or possession of any claimant, it is *axiomatic* that this Court while considering a *l i s* challenging G.O.Ms.No.375 or claiming similar benefit as under G.O.Ms.No.375, does not determine either title or possession.

There is one another aspect. On text and authority, the State or its agencies impleaded as respondents 1 to 4, are seen to have no authority or jurisdiction to declare or determine competing claims of title to a property, in particular while exercising power u/Sec. 48(1). On exercise of power U/Sec.48(1), the State merely relinquishes and abdicates from the acquisition process. It is a complete abdication. Neither integral to such exercise nor ancillary thereto is it apparent that the State has power, authority or jurisdiction or even the competence to determine or pronounce upon who inherits title to the property. In an order under Sec.48(1) any observation by the State as to title, possession or the like of any person, is extraneous to the exercise of a power under Sec.48(1). The only relevant fact is that the State had acquired the land and possession of such acquired land has not been taken.

For the aforesaid reasons, the assumptions underlying the filing of this writ petition and the reliefs sought herein are seen to be misconceived. G.O. Ms. No. 375, dated 7.9.2002 does not *per se*

reconvey the property to any individual. The order only tantamounts to the State withdrawing from the acquisition and restoring land to the position it was prior to the acquisition, in so far as the State is concerned.

The writ petition is accordingly dismissed. No order as to costs.

GODA RAGHURAM,J

16th NOVEMBER 2006

LR Copy to be marked: YES/NO
***TSNR/PVSN**